IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 536 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILIPBHAI @ DIPAKBHAI
Versus
STATE OF GUJARAT

Appearance:
MR DEEPAK M SHAH for Appellant No. 1
MR KG SHETH, APP for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 03/05/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellant Dilipbhai @ Dipakbhai Makanbhai Patel was the accused in Sessions Case No.120 of 1992 before the Additional Sessions Judge, Valsad at Navsari.

2. The charge against the appellant was that he struck a knife blow on the left side of the abdomen of Bipinbhai Ravjibhai which proved fatal. The appellant was charged with the offences under Sections 302 and 504 of the I.P.C.. The learned Additional Sessions Judge acquitted him of the offence under Section 504 but convicted him of the offence under Section 302 and sentenced him to a life term and to pay a fine of Rs.200/-, in default, Rigorous Imprisonment for 15 days. The appellant has, therefore, preferred this appeal challenging his conviction.

3. The prosecution case is to be found in the evidence of three main witnesses, namely, Sharmaben Chimanbhai (P.W.5), her brother Vinodbhai Chimanbhai (P.W.4) and Naynaben Maganbhai (P.W.6).

4. Sharmanben's evidence shows that at the time of the incident, she was living with her brother. She was a student in the Third Year B.A. in the college at Chikhli. The college time was 11.30 a.m. to 3.45 p.m.. She used to go to college by bus. On 22nd October, 1991, she went to college and after attending three periods, she was going to Chikhli bus-stand at about 1.30 - 2.00 p.m. Her friend Naynaben was with her. At that time, the appellant Dipak was following them. Near Jaideep Cinema, he snatched the bag of books from Sharmaben. The bag contained three notebooks and a purse. She snatched it back from Dipak. Dipak gave her two slaps and again grabbed the bag and rode away on his bicycle. She borrowed two rupees from Naynaben and went home by bus. At home, she told her parents about the incident. Her father told her that they will tell Vinod when he comes. Vinod came at about 7 o'clock in the evening. She told Vinodbhai about the incident. He said that they will see about it in the morning and that she will get back the books.

5. Next day, she and Vinodbhai left home to go to the factory to get back the books. It appears that the appellant was employed in a diamond-cutting factory. On the way Bipinbhai Ravjibhai met them. He was on a motorcycle. Bipinbhai and Vinodbhai were to go together for some other work but Vinodbhai told Bipinbhai about the notebooks and Bipinbhai said that they may get the

notebooks first. They all three went on the motorcycle to the factory which was situated on the old Valsad road at Chikhli. That factory belongs to Dineshbhai Lad. They reached there about 9.00 to 9.30 in the morning. The appellant Dipakbhai was called out. She demanded her notebooks from him. He lied and denied having taken her notebooks. When Vinodbhai questioned him, the appellant caught him by the throat. Seeing that, Bipinbhai who was standing at some distance, came near. Vinodbhai had, by that time, managed to push the appellant aside and free himself. Bipinbhai said that they had not come to pick a fight and told the appellant to give back the notebooks so that they may leave. However, the appellant took out a knife from his pocket and struck a blow on the left side of the abdomen of Bipinbhai. Bipinbhai started bleeding profusely. The knife was taken out. They took Bipinbhai on the motorcycle to the hospital at Chikhli. Vinodbhai rode the motorcycle. She was sitting on the back and Bipinbhai was seated between them. At the hospital, Bipinbhai was given treatment and he was given transfusion. However, the doctor told them to take him to Navsari. Then they took Bipinbhai to Navsari in an ambulance. On arrival at the Civil Hospital at Navsari, Bipinbhai was declared dead by the doctor. He was taken back to Chikhli in the same ambulance. The body was taken away for post-mortem. She and her brother went to Chikhli Police Station and Vinodbhai lodged his complaint.

6. According to Sharmaben, Dipak had been harassing her for the last two years and that was the reason why he had taken away the books. She also said that when they took Bipinbhai to Chikhli hospital, the doctor had asked them how Bipinbhai had been injured and they had told the doctor who had given the blow and with what weapon. They had told the doctor that the appellant had given a knife blow.

7. In cross-examination, she said that she had never complained to the police that the appellant had been harassing her for two years. She denied that she and the appellant had been in love with each other and that her family members did not like her moving about with the appellant. She admitted that previously on two occasions, there had been a quarrel between her brother Vinod and the appellant. She also admitted that there was enmity between her brother and the appellant. She also admitted that her other brother Nattubhai had married Manjuben, the sister of the appellant, against the wishes of their family and Nattubhai and Manjuben had been living apart since then. She admitted that because

of that marriage, their family was not on good terms with the family of Manjuben.

8. She denied that there was a scuffle between the appellant, her brother and Bipinbhai but she said that there was a scuffle between her brother and Dipak. She denied that the deceased had caught the arms of the accused from behind, that her brother Vinodbhai was armed with a knife, that when Vinodbhai aimed a knife blow at the appellant, he dodged it and hence it hit Bipinbhai who was standing behind him. She denied that they had not told the doctor who had given the blow to Bipinbhai and that after the death of Bipinbhai, her brother became the complainant and she became the witness in order to escape from the responsibility.

9. Vinodbhai Chimanbhai (P.W.4) has corroborated the evidence of Sharmaben in all material particulars and it is not necessary to reproduce the entire evidence. The complaint was lodged by him at the police station at Chikhli at about 1405 hours on 23rd October, 1991 and it is at Exh.29. In his cross-examination too, the same version of the incident was put to him as in the cross-examination of Sharmaben but he denied it. He said in his evidence that when they asked the appellant whether he had taken the books and the purse of his sister, the appellant had lied and had started giving abuses.

10. Naynaben Maganbhai (P.W.6) has also corroborated the evidence of Sharmaben. According to her, while they were going back from college at about 1.30 p.m., the appellant came on a bicycle and snatched the books from Sharmaben and rode away. She lent two rupees to Sharmaben since she did not have any money on her. Sharmaben went to her village Bamanvel by bus. The appellant Dipakbhai came back 10-15 minutes after the bus left and gave her the books saying that she should give them to Sharmaben. She took back the books and went to her maternal uncle's village Vanjhana. She stayed there on 23rd and she came to college in the morning on 24th October, 1991. In the evening, when she left college to go to the bus depot, she saw Sharmaben going towards the court. She went after her to give back her books. She was seated in the court and when she came out, she gave the books to her and told her to take them back. However, she did not take them back. She went to the court and handed over the books to a person who was in Khaki dress. Obviously, when she referred to the court in her evidence, she was referring to the police station. Nothing substantial has been brought out in her

cross-examination to shake her testimony.

11. The prosecution also examined Dineshbhai who was the owner of the factory where the accused was working. According to the prosecution, he was an eye-witness but at the trial, he did not support the prosecution and was declared hostile.

12. According to Dr. Maheshbhai Jayantibhai Patel (P.W.1), he was on duty as Medical Officer at the Primary Health Centre at Chikhli. On 23rd October, 1991, Bipinbhai was brought to the hospital at 9.45 a.m.. He was accompanied by a girl and Vinodbhai. He examined Bipinbhai. He found that there was a stab wound in the abdomen and it was a deep penetrating wound. He gave primary treatment and referred him for further treatment to Navsari Civil Hospital. He also prepared the case papers which were produced at Exh.7. According to him, Vinodbhai had told him that Dipakbhai Makanbhai is the assailant. He made an entry to that effect in the case papers. The case papers clearly mention that he was assaulted by somebody and then it is mentioned "by Dipak Makan". It is also mentioned that the injured was brought by Sharmaben and Vinodbhai Patel. He also carried out the post-mortem after the dead body of Bipinbhai was brought back from Navsari. According to him, there was a stab (penetrating) wound of 2 c.m. x 3/4 c.m. intra-abdominal with peritoneal cavity deep over left side of hypochondrium. There were corresponding internal injuries. He said that the cause of death was injury to spleen and intra-abdominal injury over left side of upper part leading to haemorrhagic shock. He also said that the injury was possible by a sharp edged instrument like a knife.

13. The defence pleaded by the appellant in his further statement which was recorded after the prosecution evidence was over was that Vinodbhai and Bipinbhai had come to the factory. They had asked a worker whether the appellant was there. The worker said that he was there. He was informed that somebody wanted to see him. He, therefore, went out. They asked him where the notebook was. He said that he knew nothing. Hence, they started beating him. They had come with the intention of beating him. Bipinbhai held him by the arms from behind and Vinodbhai took out a knife and aimed a blow at him but he dodged it and the knife hit Bipinbhai. He fell down bleeding profusely. He, therefore, raised a shout and the people living in the mohalla came there.

He told them that a knife blow was given by Vinodbhai. Vinodbhai and Bipinbhai were talking about what to do. Then, they went away on the motorcycle. The brother of Sharmaben had married his sister since they were in love and because of the previous enmity, he has been falsely implicated. He and Sharma too were in love and on 22nd October, 1991 he, Sharma and Naynaben had gone to the cinema. Sharmaben wanted to marry him but since her family members were opposed to it, a false complaint had been filed against him.

14. Now, the prosecution evidence which has been outlined above is consistent and there is nothing in the evidence on record to probablise the defence version that it was Vinodbhai who aimed a knife blow at the appellant but it hit Bipinbhai since the appellant moved aside. It is established on evidence that, on the previous day, the appellant had taken away the books from Sharmaben. It is true that, after some time, the appellant had returned the books to Naynaben but by that time Sharmaben had left and that she did not know that the books had been returned to Naynaben. The incident occurred when Sharmaben, her brother Vinodbhai and Bipinbhai went to speak to the appellant next day morning. In the circumstances of the case, the learned Additional Sessions Judge has rightly disbelieved the defence version and held that it was the appellant who had given the fatal blow. However, the evidence also shows that it was Bipinbhai and Vinodbhai who had gone to the appellant's place of work to speak to him about the books which he had taken from Sharmaben. Sharmaben has also said that there was a scuffle between her brother and the appellant. The prosecution case was that the appellant had given abuses but it is quite probable that it was not a one-sided affair and there must have been a heated exchange of words and abuses between the appellant on the one hand and Vinodbhai on the other. It appears that the blow came to be struck in the heat of the moment and had hit Bipinbhai in the abdomen and the injury proved fatal. In our opinion, in the facts and circumstances, the case would be covered under Exception (4) to Section 300 and the offence committed by the appellant would fall under Section 304 Part I of the I.P.C. We, therefore, alter his conviction from one under Section 302 to one under Section 304 Part I and sentence him to Rigorous Imprisonment for 10 years and to pay a fine of Rs.200/-, in default, Rigorous Imprisonment for 15 days. The appeal is partly allowed to the said extent.

(M.C. Patel, J.)

(A.L. Dave, J.)

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